

***United States Court of Appeals  
for the  
District of Columbia Circuit***



**TRANSCRIPT OF  
RECORD**



BRIEF FOR APPELLANT AND JOINT APPENDIX

**United States Court of Appeals**

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,705

JACK O. KING,

*Appellant,*

v.

DISTRICT OF COLUMBIA,

*Appellee.*

Appeal From the District of Columbia  
Court of Appeals

840

United States Court of Appeals  
for the District of Columbia Circuit

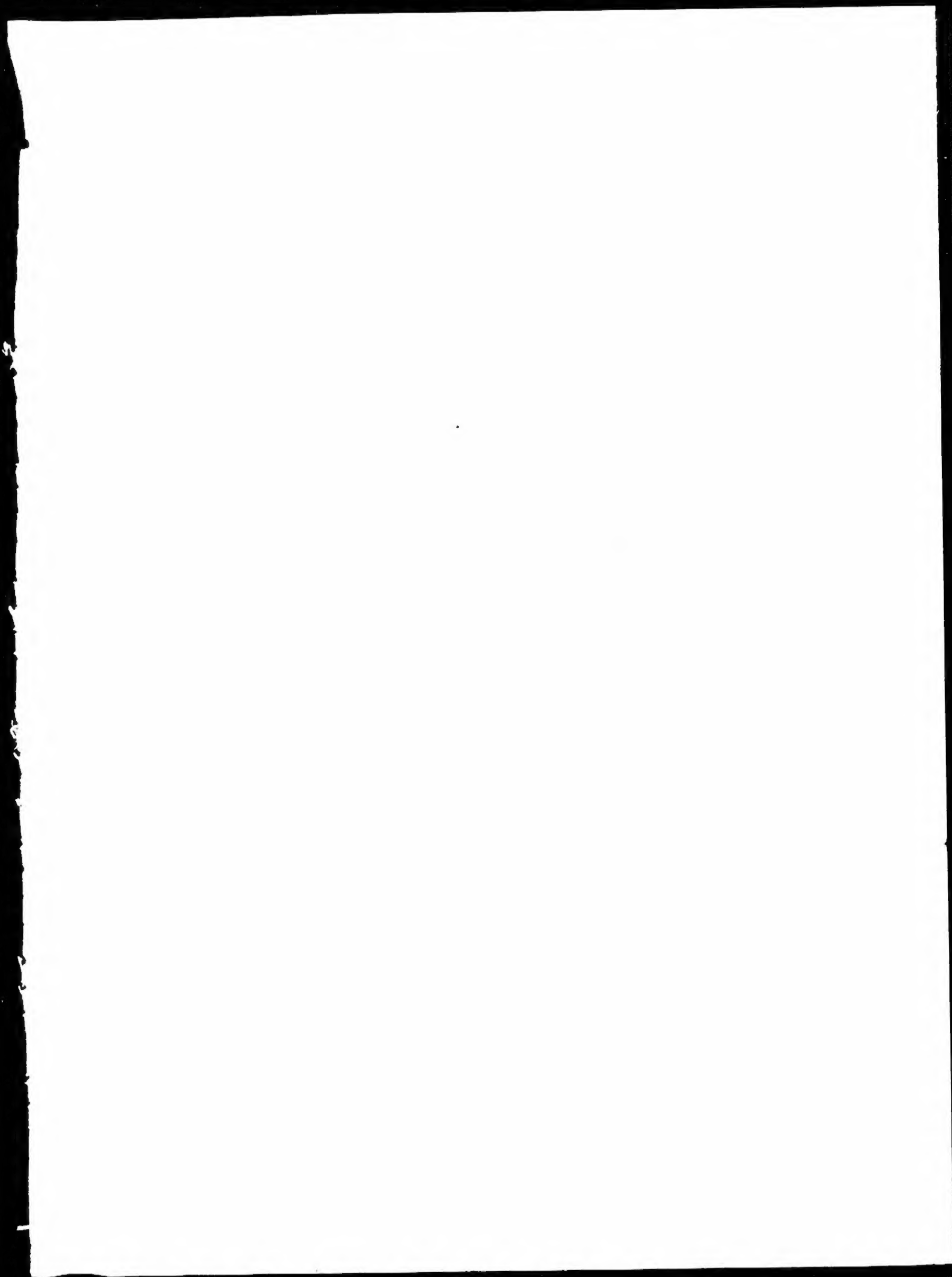
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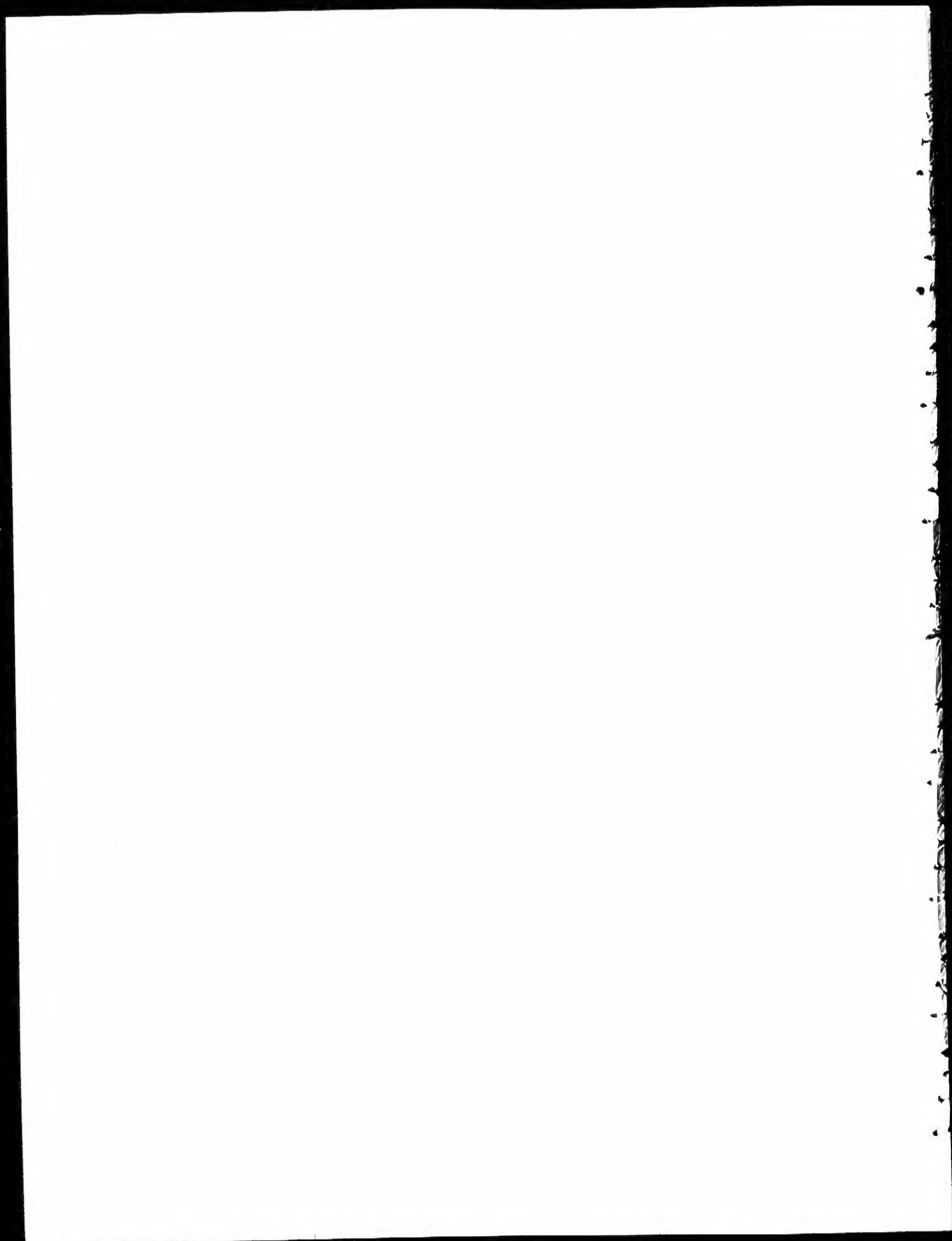
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( i )

**QUESTION PRESENTED**

Whether an acquittal of the charge of conducting a business in second-hand personal property, to wit, stamps and coins, without first having obtained a license so to do, in violation of Title 47, § 2339 of the D. C. Code, on the ground that a dealer in stamps and coins does not fall within the purview of said statute, bars a second prosecution against the same defendant, a dealer in stamps and coins, for the identical charge of conducting a business dealing in stamps and coins on a date subsequent to the first prosecution.

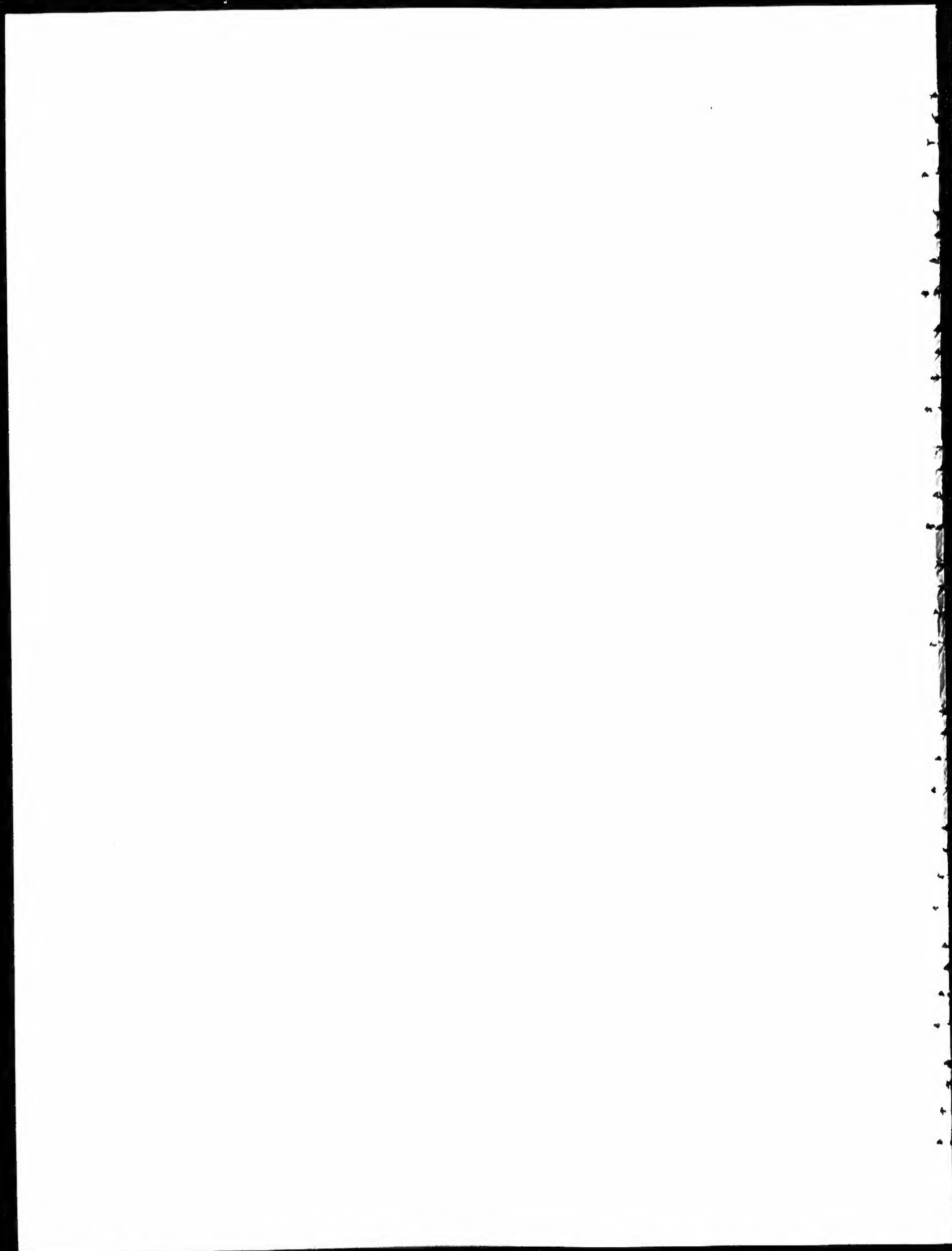


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JACK O. KING,

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DISTRICT OF COLUMBIA,

*Appellee.*

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Appeal From the District of Columbia  
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## BRIEF FOR APPELLANT

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### JURISDICTIONAL STATEMENT

On August 6, 1963, the District of Columbia filed in the District of Columbia Court of General Sessions Information No. D. C. 22692-63 against appellant, Jack O. King, charging him with conducting a business in second-hand personal property, to wit, stamps and coins, without first having obtained a license so to do, on the 27th day of June, 1963, in violation of Title 47, § 2339 of the D. C. Code, commonly referred to as the Secondhand Dealers Statute. On October 3, 1963, appellant was tried by the court and found not guilty of the charge. On October 14, 1963, the District of Columbia filed in the District of Columbia Court of General Sessions Information No. D. C. 30407-63

against appellant charging him with conducting a business in second-hand personal property, to wit, stamps and coins, without first having obtained a license so to do, on the 9th day of October, 1963, in violation of Title 47, § 2339 of the D. C. Code. On October 24, 1963, appellant filed a Motion to Quash and Dismiss said information, which motion was granted by the court under order dated October 29, 1963. Appellee filed its Notice of Appeal from said order with the District of Columbia Court of General Sessions on November 7, 1963. On June 16, 1964, the District of Columbia Court of Appeals reversed the order of the trial court. On June 17, 1964, appellant filed Petition for Allowance of an Appeal with the United States Court of Appeals for the District of Columbia Circuit from the judgment of the District of Columbia Court of Appeals dated June 16, 1964, and said petition was granted on August 7, 1964. The record on appeal was docketed in this Court on June 22, 1964. A cost bond, with Travelers Insurance Company as surety, in the sum of \$100.00, approved by the Court, was filed on September 5, 1964. This Court has jurisdiction to grant the relief sought on this appeal under § 11-773, D. C. Code, 1961 ed.

### STATEMENT OF CASE

In information numbered D. C. 22692-63, filed by appellee in the District of Columbia Court of General Sessions on August 6, 1963, appellant was charged with violating § 47-2339 of the D. C. Code in that he "\* \* \* on or about the 27th day of June \* \* \* nineteen hundred and sixty-three, in the District of Columbia \* \* \* did then and there conduct a business dealing in second-hand personal property to wit: coins and stamps [w]ithout first having obtained a license so to do \* \* \*." (J.A.1-3). Appellant was tried by the court on October 8, 1963. After hearing testimony of the government's sole witness, Mr. Lee of the Department of Licenses and Inspections, that appellant did in fact engage in the business of buying and selling coins and stamps, and this

fact having been conceded and stipulated to by appellant at the time of trial, the court entered a judgment of acquittal on the ground that stamps and coins do not constitute second-hand personal property within the meaning of the Secondhand Dealers Statute; a fortiori, a dealer in stamps and coins does not fall within the purview of said statute. (Agreed Statement of Proceedings and Evidence, J.A. 9.)

Thereafter, appellee filed information numbered D. C. 30407-63 in the same court on October 14, 1963, charging appellant with violating the same statute in that he "\* \* \* on or about the 9th day of October \* \* \* nineteen hundred and sixty three, in the District of Columbia \* \* \* did then and there conduct a business dealing in second-hand personal property to wit: coins and stamps [w]ithout first having obtained a license so to do \* \* \* ." (J.A. 4-6) Appellant filed a motion to quash and dismiss this second information on the ground that the judgment of acquittal on the first information barred the second prosecution under the doctrines of stare decisis and res adjudicata. (J.A. 7) Said motion was heard and granted on October 29, 1963, by the same judge who tried the first case. (J.A. 8). Appellee filed Notice of Appeal from dismissal of the second information on November 7, 1963. (J.A. 8) The trial court's action in dismissing the second information was reversed by the District of Columbia Court of Appeals in its judgment filed June 16, 1964. (J.A. 10) This appeal followed.

#### STATUTE AND REGULATION INVOLVED

The statute involved is Title 47, Section 2339 (a), (b), and (c), D. C. Code, 1961 ed., commonly referred to as the Secondhand Dealers Statute. This statute is set forth in its entirety in Appendix A hereto.

The regulation involved is Police Regulations, Article 1, entitled "Junk Dealers, and Persons Engaged in the Secondhand Clothing Busi-

ness." The pertinent provisions of said regulation are set forth in Appendix B hereto.

### STATEMENT OF POINTS

The District of Columbia Court of Appeals erred as a matter of law in:

1. Reversing the trial court's action in dismissing the second information filed against appellant. (Judgment of District of Columbia Court of Appeals, J.A. 10.

2. Finding that the record does not disclose what activities of appellant were held in the first case not to be within the purview of the statute. Opinion No. 3414 of the District of Columbia Court of Appeals, J.A. 11-13.

### SUMMARY OF ARGUMENT

The judgment of the District of Columbia Court of Appeals reversing the order of the District of Columbia Court of General Sessions granting appellant's Motion to Quash and Dismiss the second information involved herein should be reversed and the District of Columbia Court of Appeals should be directed to enter a judgment affirming the action of the trial court.

The District of Columbia Court of Appeals limited its consideration of this case only to the question of whether the doctrine of former jeopardy applied, when it should have considered the applicability of the doctrine of res adjudicata because it was the latter doctrine that formed the basis for the trial court's action in dismissing the second information.

### ARGUMENT

Appellant contends that under the doctrine of res adjudicata his acquittal definitely bars the second information. That doctrine operates to render a prior judgment conclusive between the parties as to those matters actually litigated and determined by the prior judgment. The prior judgment determined that stamps and coins did not constitute second-hand personal property; therefore, appellant's activities as a stamp and coin dealer did not fall within the purview of the Second-hand Dealers statute.

The applicability of the doctrine of res adjudicata to criminal cases has been recognized and discussed by the United States Supreme Court on numerous occasions. In United States v. Oppenheimer, 242 U.S. 85 (1916), defendant was indicted for an offense which the court found was barred by the statute of limitations. Subsequently a second indictment was filed against the same defendant for the same offense. The second indictment was quashed because of the previous adjudication that the offense was barred by the statute of limitations. In holding that the second indictment was properly quashed under the doctrine of res adjudicata, the High Court said:

Where a criminal charge has been adjudicated upon by a court having jurisdiction to hear and determine it, the adjudication, whether it takes the form of an acquittal or conviction, is final as to the matter so adjudicated upon, and may be pleaded in bar to any subsequent prosecution for the same offense.  
Ibid, at p. 87.

The doctrine was more particularly dealt with by the United States Supreme Court in Sealfon v. United States, 332 U.S. 575 (1948), wherein defendant was acquitted on a charge of conspiring with another to defraud the United States by presenting to a ration board false invoices which were in fact prepared and presented by another

person. Defendant was subsequently charged with aiding and abetting such other person in the substantive offense of defrauding the United States. The issue involved on appeal was whether an acquittal of conspiracy to defraud the United States precluded the subsequent prosecution for commission of the substantive offense of defrauding the United States. The Court held in the affirmative on the ground that the basic facts in each trial were identical and the government would have to present the same evidence in both trials. The Court pointed out that in both trials the government would have to prove a certain agreement made between the defendant and the other person involved, and the fact that defendant had not made such an agreement had been adjudicated in the former trial. The Court said that the second prosecution was merely a second attempt by the government to prove something which they could not prove in the first trial and "this the prosecutor may not do." In the instant case the government would have to prove that cancelled stamps and coins constituted personal property, and the fact that such articles do not constitute personal property was adjudicated in the first trial.

In elaborating on the application of the doctrine of res adjudicata in criminal cases, the appellate court in United States v. DeAngelo (3rd Cir. 1943), 138 F.2d 466, 468, said:

The conclusiveness of a fact which has been competently adjudicated by a criminal trial is not confined to such matter only-as is sufficient to support a plea of double jeopardy. Even though there has been no former acquittal of the particular offense on trial, a prior judgment of acquittal on related matters has been said to be conclusive as to all that the judgment determined. The matter is one of collateral estoppel of the prosecutor. (underscoring furnished)

A "rule of evidence" has been recognized which accords to the accused the right to claim finality

with respect to a fact or group of facts previously determined in his favor upon a previous trial.

The court in United States v. Carlisi, E.D. N.Y., 32 F. Supp. 479, 482 (1940), said:

To bring himself within the res judicata rule it is not necessary for the defendant to show that the offense for which he is being tried is identical in law or in fact with the earlier criminal proceeding. Res judicata usually concerns itself with evidentiary or intermediate facts determined in the prior litigation. It must be noted that the evidentiary or intermediate fact may, in some instances, be a complete bar to a second prosecution for another offense. An example of this will be found in a case where the defense upon the earlier trial was an alibi and the later trial is one for the commission of a crime committed at the same time and place.

The ground on which the defendant is acquitted under the first information is an important factor in determining whether he can properly be tried again under the same statute for the same activities on a subsequent date. For instance, in Ellingham v. State, 162 A. 709 (1932) the appellant was tried under an indictment charging him with having served as an agent of a foreign corporation in violation of a certain statute on the specified date of November 18, 1931. He was acquitted on the ground that his activities as a telegraph operator were not sufficient to make him an "agent" under the statute. He was subsequently charged with violating the same statute under a second indictment which was based on the same facts, the only variance being in the specification of the day on which the offense was said to have been committed, i.e. November 17th. In holding that the acquittal under the first indictment constituted a bar to the second prosecution, the court said:

The acquittal of the appellant when tried upon the charge which referred to November 18, was a determination that his conceded work as a telegraph operator on that day did not make him liable to prosecution as an agent of the foreign corporation by which he was employed. In view of that adjudication \* \* \* he should not be compelled to undergo another trial on the charge of having performed, on the preceding day, the same unchanging and continuous service. Ibid, at p. 710.

Just as was the defendant in the Ellingham case acquitted on the ground that his activities did not fall within the purview of the governing statute, so was appellant in the instant case acquitted on the same ground.

The gravamen of the offense charged in the instant case was that by dealing in stamps and coins appellant was conducting a business in second-hand personal property without a second-hand dealers license. The appellant stipulated and conceded that he was a dealer in stamps and coins and that he did not have a second-hand dealers license. However, he contended that stamps and coins were not second-hand personal property within the meaning of the statute under which he was charged. Therefore, the only issue to be determined by the trial court was whether or not coins and stamps constituted second-hand personal property. The trial court found as a matter of fact that coins and stamps do not constitute personal property within the meaning of the Secondhand Dealers Statute and concluded as a matter of law that a dealer in stamps and coins is not a dealer in second-hand personal property. In other words, the court held that the statute is not applicable to a dealer in stamps and coins. The prior adjudication that engaging in the business of stamps and coins did not constitute a violation of the statute would certainly bar a subsequent prosecution for the very same activities under the same statute even though said activities were committed on a date subsequent to the first prosecution.

It is difficult to understand the majority view of the District of Columbia Court of Appeals that "the record does not disclose what activities of appellee were held to be within the purview of the statute, and of course cannot show what activities of appellee will be disclosed by the evidence of a second prosecution." (Opinion No. 3414 of the District of Columbia Court of Appeals, J.A. 11-13. On the face of both informations it was expressly charged that by dealing in stamps and coins appellant was in violating of the Secondhand Dealers Statute because he did not have a second-hand dealers license to conduct such a business. It is, therefore, obvious that the "activities" charged by the government in both informations are the conceded activities of dealing in stamps and coins without first having obtained a second-hand dealers license. Therefore, the government in the second information charged appellant with violating a statute which had already been determined and adjudicated by a court of competent jurisdiction as not even being application to him, a dealer in stamps and coins.

If a lawyer in the Trust Department of Riggs Bank were prosecuted for practicing law without a license because he drafted wills for some of the patrons of the bank, and he were acquitted on the ground that the act of drafting wills for others did not constitute practicing law within the meaning of the statute, it is inconceivable that the government would be permitted by our courts to charge him again with violation of the same statute for the same activities on a subsequent date. The exact situation exists in the instant case.

The effect of the majority opinion is to permit the government to charge appellant infinitum for engaging in activities which have been held not to be in violation of any statute. Judge Quinn's well-reasoned and vigorous dissent points to the unlimited harassment to which a defendant would be subjected were the rule set forth in the majority opinion to be affirmed by this Court. Judge Quinn writes:

The majority decision subjects a presumably innocent defendant to unlimited harassment, expense and prosecution until the government wins its case. Such a result is patently unfair.

### CONCLUSION

The judgment of the District of Columbia Court of Appeals should be reversed and said court should be directed to enter a judgment affirming the action of the trial court.

Respectfully submitted,

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APPENDIX A

District of Columbia Code, Title 47, Section 2339 (a), (b), and (c):

(a) The Commissioners of the District of Columbia are authorized and empowered to classify dealers in secondhand personal property (referred to in this section as "dealers") and to fix and collect a license fee for each such class of dealer, which fee, in the judgment of the Commissioners, will be commensurate with the cost to the District of Columbia of inspection, supervision, and regulation of such class of dealer.

(b) In classifying dealers the Commissioners may take into consideration the kind of property dealt in, whether the property is retained by the dealer for sale at retail, whether the property is disposed of by the dealer out of the District of Columbia, whether the property is disposed of by the dealer as junk or otherwise, and such other criteria as the Commissioners may deem appropriate.

(c) Any person engaging in the business of buying, selling, trading, exchanging, or dealing in secondhand personal property of any description, including the return of unused portion of any ticket, order, or token purporting to evidence the right of the holder or possessor thereof to be transported by any railroad or other common carrier, however operated, from one State or Territory of the United States, or from the District of Columbia, to any other State or Territory of the United States or to the District of Columbia, shall be regarded as a dealer, and shall obtain the appropriate license and pay the fee therefor fixed by the Commissioners. For the purposes of this section, the term "secondhand personal property" shall not include any item of personal property (1) which the possessor thereof has acquired as part payment or allowance on the sale by such possessor of a new or rebuilt item of personal property, (2) which the possessor thereof has

acquired by reason of its return to him for credit, refund, or exchange by a person having purchased such item from such possessor, or (3) which is offered for sale, trade, or exchange by the person who repossesses the same.

#### APPENDIX B

Police Regulations, Article 1, entitled "Junk Dealers, and Persons Engaged in the Secondhand Clothing Business":

Section 1. (a) Dealers in secondhand personal property in the District of Columbia shall be designated as follows:

**CLASS A SECONDHAND DEALER:** A Class A secondhand dealer shall be a person, firm or corporation, other than a Class B secondhand dealer, engaged in the business of buying, selling, trading, exchanging or dealing in secondhand personal property of any description (other than motor vehicles), including the return or unused portion of any railroad ticket, order or token.

**CLASS B SECONDHAND DEALER:** A Class B secondhand dealer shall be a person, firm or corporation primarily engaged in the sale of new merchandise and incidentally engaged in selling, trading, exchanging or dealing in secondhand personal property of any description (other than motor vehicles) as the result of having received such secondhand personal property in trade, or by repossession or as part payment for new merchandise. No Class B secondhand dealer shall engage in the business of dealing in used personal property except as an incident to the sale of other merchandise.

(b) Every junk dealer and Class A dealer in secondhand personal property shall keep at his place of business a book or books, in which shall be legibly written and numbered consecutively, in English, at the time of each transaction in the course of his business an accurate account of such transaction (except as to the

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purchase of rags, bones, old iron and paper by junk dealers) setting forth an accurate and complete description of the goods, article or thing purchased, or received on account of money paid therefor, giving all numbers, marks, monograms, trade marks and manufacturer's names and any other marks of identification appearing on same, at the time of receiving the same; the name, sex, color, and residence of the person selling, or delivering the same; the terms and conditions of the purchase, or receipt thereof, and all other facts and circumstances respecting such purchase or receipt, and no such person shall melt, vulcanize or otherwise change or destroy the identity of the thing or article purchased or taken in the course of this business, or take apart or melt up any ring, watch, watch case or article of jewelry, or other article composed of or manufactured in whole or in part of gold, silver, or platinum, within the period thereafter prescribed for holding the same; PROVIDED: That junk dealers and Class A dealers in secondhand personal property shall not be required to make in said book or books any entry or description of any books purchased or received except books of such title and description as are then in current use in any of the public schools of the District of Columbia; and every junk dealer and Class A dealer in secondhand personal property shall also legibly write in English on tags to be prescribed by the Commissioners of the District of Columbia the date of every purchase made and the name of seller, which tag shall be securely fastened on the property purchased except those books of which no record is required by this article to be kept, and shall be numbered to correspond with the number of the description of said property on his book; and said property shall be kept separate and distinct from all other property or merchandise in his place of business, and shall not be changed in identity, or destroyed or, in the case of any article or articles of jewelry or other thing composed of, or

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acquired by reason of its return to him for credit, refund, or exchange by a person having purchased such item from such possessor, or (3) which is offered for sale, trade, or exchange by the person who repossesses the same.

### APPENDIX B

Police Regulations, Article 1, entitled "Junk Dealers, and Persons Engaged in the Secondhand Clothing Business":

Section 1. (a) Dealers in secondhand personal property in the District of Columbia shall be designated as follows:

**CLASS A SECONDHAND DEALER:** A Class A secondhand dealer shall be a person, firm or corporation, other than a Class B secondhand dealer, engaged in the business of buying, selling, trading, exchanging or dealing in secondhand personal property of any description (other than motor vehicles), including the return or unused portion of any railroad ticket, order or token.

**CLASS B SECONDHAND DEALER:** A Class B secondhand dealer shall be a person, firm or corporation primarily engaged in the sale of new merchandise and incidentally engaged in selling, trading, exchanging or dealing in secondhand personal property of any description (other than motor vehicles) as the result of having received such secondhand personal property in trade, or by re-possession or as part payment for new merchandise. No Class B secondhand dealer shall engage in the business of dealing in used personal property except as an incident to the sale of other merchandise.

(b) Every junk dealer and Class A dealer in secondhand personal property shall keep at his place of business a book or books, in which shall be legibly written and numbered consecutively, in English, at the time of each transaction in the course of his business an accurate account of such transaction (except as to the

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purchase of rags, bones, old iron and paper by junk dealers) setting forth an accurate and complete description of the goods, article or thing purchased, or received on account of money paid therefor, giving all numbers, marks, monograms, trade marks and manufacturer's names and any other marks of identification appearing on same, at the time of receiving the same; the name, sex, color, and residence of the person selling, or delivering the same; the terms and conditions of the purchase, or receipt thereof, and all other facts and circumstances respecting such purchase or receipt, and no such person shall melt, vulcanize or otherwise change or destroy the identity of the thing or article purchased or taken in the course of this business, or take apart or melt up any ring, watch, watch case or article of jewelry, or other article composed of or manufactured in whole or in part of gold, silver, or platinum, within the period thereafter prescribed for holding the same; PROVIDED: That junk dealers and Class A dealers in secondhand personal property shall not be required to make in said book or books any entry or description of any books purchased or received except books of such title and description as are then in current use in any of the public schools of the District of Columbia; and every junk dealer and Class A dealer in secondhand personal property shall also legibly write in English on tags to be prescribed by the Commissioners of the District of Columbia the date of every purchase made and the name of seller, which tag shall be securely fastened on the property purchased except those books of which no record is required by this article to be kept, and shall be numbered to correspond with the number of the description of said property on his book; and said property shall be kept separate and distinct from all other property or merchandise in his place of business, and shall not be changed in identity, or destroyed or, in the case of any article or articles of jewelry or other thing composed of, or

manufactured in whole or in part of gold, silver or platinum, shall not be melted, taken apart, or any identification marks appearing thereon obliterated, until after expiration of fifteen days from the time at which report has been made to the Chief of Police of the purchase thereof, and shall not be sold or disposed of in any manner during that period, PROVIDED, That nothing herein contained shall be construed to prohibit the redemption and removal of any property by the owner thereof at any time. No such person shall purchase or receive any goods or other articles from a minor without written consent of his or her parents or guardians. Nothing contained in this Section shall apply to property purchased by such junk dealer or Class A secondhand dealer from the United States or District of Columbia Governments. (C.O. No. 57-1638.)

(c) Every junk dealer and Class A dealer in secondhand personal property shall secure the name and address of the person purchasing or otherwise acquiring any item of the following classes of personal property: (C.O. No. 57-1638.)

- (1) Binoculars
- (2) Cameras
- (3) Firearms
- (4) Furs
- (5) Household appliances
- (6) Jewelry
- (7) Musical instruments
- (8) Office machines and equipment
- (9) Radios and television sets
- (10) Watches
- (11) Any item other than those listed above having a retail sales value of \$25.00 or more.

Section 2. Every junk dealer, and Class A dealer, in secondhand personal property shall every day, except Sunday, before the hour of 11 o'clock in the forenoon, deliver to the Chief of Police,

or his representative, on blank forms to be prescribed by the Commissioners of the District of Columbia, a legible and correct transcript from the books provided for in the preceding section, showing an accurate and complete description of every article or thing received by him and giving all numbers, marks, monograms, trade marks and manufacturer's names, and other marks of identification appearing on the same, on the business day next preceding (except as to purchase of rags, bones, old iron and paper by junk dealers and Class A dealers in secondhand and personal property of those books of which no record is required by this article to be kept). (C.O. No. 57-1638)

Section 3. It shall be the duty of every junk dealer, or Class A, or Class B dealer in secondhand personal property, and of every person in his employ, to admit to his premises during business hours any member of the Metropolitan Police Force of the District of Columbia as aforesaid to examine any book or other record on the premises, as well as the articles purchased, or received, and to search for and take possession of any article known by him to be missing or known or believed by him to have been stolen, without the formality of the writ of search warrant or any other process, which search or seizure is hereby authorized. (C.O. No. 57-1638.)

Section 4. Any licensed junk dealer, or Class A, or Class B dealer in secondhand personal property, or any agent, clerk, or employee of any such person who shall molest, hinder, or in any manner prevent any official lawfully authorized, or the Chief of Police, or such member of the police force authorized therefor, from making such inspection and search of said premises and taking into possession such article or articles known by said officer, or alleged or supposed to have been feloniously taken from the owner or possessor, or known or believed by such official to have been stolen as provided in Section 3 of this article, shall be

liable to the penalty hereinafter provided for the violation of any of the provisions of these regulations. (C.O. No. 57-1638)

Section 5. Every junk dealer or Class A dealer in second-hand personal property shall make application to the Commissioners of the District of Columbia annually for license to conduct such business. Such application shall be sent to the Chief of Police, fire marshal, and the Director of Public Health for report, respectively, as to the character of the applicant and the surroundings where such business is to be conducted, and such report shall be sent to the Commissioners for their action, except that the fire marshal and Director of Public Health shall be required to report only upon applications for junk shop licenses, and in case of the Director of Public Health the junk shop licenses where rags and similar fabrics are handled. All applicants shall hereafter have three sets of their fingerprints taken at the Headquarters of the Metropolitan Police Department. Fingerprints so furnished shall become a part of the respective application. All of the partners in the case of a partnership, and the president, vice president, secretary, and treasurer of a corporation shall be required to comply with the above provisions. Any of the persons named above who are not residents of the District of Columbia shall have their fingerprints taken by the Metropolitan Police Department or by the police department or comparable authority where they are resident, said fingerprints, when taken by other than the Metropolitan Police Department, to be attached to and accompanied by an affidavit of the authority taking said fingerprints that said fingerprints are the fingerprints of such person. Fingerprints so taken shall be submitted to the Federal Bureau of Investigation, and to such other and further authorities as the Chief of Police may deem advisable, for comparison and record. Any license so granted may be revoked by the Commissioners, after a hearing to be conducted by a board appointed by the Com-

missioners, if it shall appear that such place of business is used for the disposal of stolen goods or is conducted in such a way as to make it a menace to the health or welfare of the neighborhood. Notice shall be given the licensee of the time and place of hearing, and he shall be entitled to be present with counsel and witnesses. The Board shall make a report of the hearing, with its advice upon the case to the Commissioners for their action.

Section 6. (a) Class B Secondhand Dealers. It shall be unlawful for any person, firm or corporation primarily engaged in the business of dealing in new personal property in the District of Columbia to accept used personal property, other than motor vehicles, in trade or part payment for any merchandise without first obtaining a Class B secondhand dealer's license.

(b) Every Class B secondhand dealer shall keep at his place of business a record of each transaction involving used personal property, setting forth an accurate and complete description of the goods, article or thing received in trade or part payment for other merchandise; the date of receipt, the name, sex, color and address of the person from whom acquired, and the name and address of the person, firm or corporation ultimately purchasing or receiving such property from the Class B dealer.

(c) Whenever any secondhand personal property so acquired is to be sold at retail, is to be sent out of the District of Columbia, or is to be retained by the licensee for his own use, the licensee shall, not less than fifteen (15) days prior to selling such property or removing it from the District of Columbia or using the property for his own purposes, deliver to the Chief of Police on blank forms prescribed by the Commissioners, a legible and correct transcript from the record hereinbefore required relating to the property to be sold at retail, removed from the District of Columbia, or retained for use by the licensee. All such property shall be kept separate and distinct from other merchandise and

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its character or identity shall neither be changed nor destroyed until after the expiration of fifteen (15) days from the time the aforesaid report has been made to the Chief of Police.

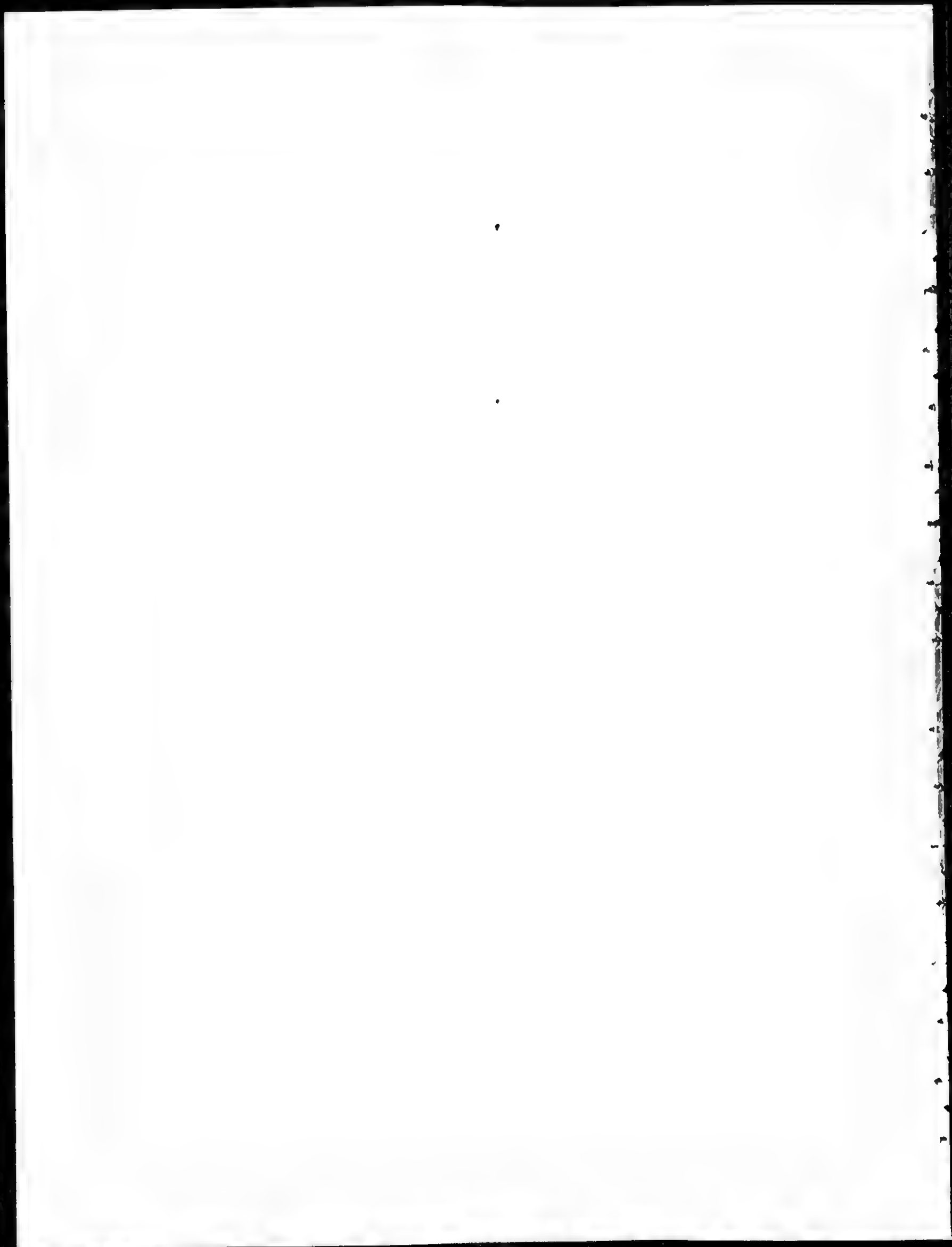
Section 7. Every licensed junk dealer, or Class A, or Class B dealer in secondhand personal property shall be liable to all the penalties hereinafter provided for violation of any of the provisions of these regulations, whether such violations be committed by himself, his agent, clerk, or employee. (C.O. No. 57-1638.)

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JOINT APPENDIX

District of Columbia Court of General Sessions

Criminal Division

JULY TERM, A.D. 1963

THE DISTRICT OF COLUMBIA, ss:

Clark F. King

Robert H. Campbell

CHESTER H. GRAY, Esq., Corporation Counsel, by

Assistant Corporation Counsel, who for the District of Columbia prosecutes in this behalf in his proper person, comes here into Court, and causes the Court to be informed, and complains that

Jack O. King

late of the District of Columbia aforesaid, on or about the 27th day of June in the year A. D. nineteen hundred and sixty three, in the District of Columbia aforesaid, and on \_\_\_\_\_ divers other days between that date and the date of the filing of this information 1718 Eye Street Northwest

\*

\*

\*

Did then and there conduct a business dealing in second-hand personal property to wit; coins and stamps.

\*

\*

\*

Without first having obtained a license so to do, Contrary to and in violation of An Act of Congress Police Regulations in such case made and provided, and constituting a law of the District of Columbia. D.C. Code 47-2339. Public Law 653.

CHESTER H. GRAY

Corporation Counsel

Personally appeared Seaward S. Lee this 6th day of August, A. D., 1963, and made oath before me that the facts set forth in the foregoing information are true, and those stated upon information received he believes to be true.

/s/ Clark F. King

## WARRANT

No. \_\_\_\_\_

DISTRICT OF COLUMBIA, ss:

To the Chief of Police of the  
District of Columbia, Greetings:

Whereas, it appears by oath of

that \_\_\_\_\_  
committed the offense as charged on the reverse  
side hereof,YOU ARE THEREFORE HEREBY  
COMMANDED to take the saidand bring him \_\_\_\_\_ before the said COURT  
OF GENERAL SESSIONS forthwith to  
answer said charge.Witness the Honorable JOHN LEWIS  
SMITH, JR., Chief Judge of the District of  
Columbia Court of General Sessions, and the  
seal of said Court this \_\_\_\_\_ day of

A.D. 19 \_\_\_\_\_

WALTER F. BRAMHALL  
Clerk, Court of General SessionsBy \_\_\_\_\_  
Deputy Clerk

LET THIS WARRANT ISSUE

Judge, Court of General Sessions  
OFFICER MUST EXECUTE CEPICepi: Amount Collateral Posted \$ \_\_\_\_\_  
Date Collateral Posted \_\_\_\_\_  
Precinct Collateral Posted \_\_\_\_\_  
Remarks \_\_\_\_\_

OFFICER'S NAME \_\_\_\_\_

HEARING

Col. \_\_\_\_\_

DC No. 22692-63

At No. \_\_\_\_\_ Precinct \_\_\_\_\_ Date \_\_\_\_\_

## INFORMATION

DISTRICT OF COLUMBIA

vs.

Jack O. King

1718 Eye St. N.W.

*Atty. J. R. Caper*UNLICENSED DEALER  
IN SECONDHAND PERSONAL PROPERTY

ROOMING HOUSE

FALSE STATEMENT

ZONING REGULATIONS

APARTMENT HOUSE

PARK ON PRIVATE PROPERTY  
VIOLATION ACT OF CONGRESS

## WITNESSES

Seaward S. Lee  
Investigator  
Dept. of Licenses & Inspection

AUG 6 1963

C 9-6-63

*P.R. JMS*

See Inside

BOOK \_\_\_\_\_ TAG \_\_\_\_\_

TICKET \_\_\_\_\_ AUTO \_\_\_\_\_

\_\_\_\_\_ Precinct

SEP 6 1963  
Continued to 10/8/63  
at ~~(Court's)~~ (Def't's) request. *consent*  
Bond to Remain. Judge Bear *ES*

OCT 8 - 1963

*Plea Not Guilty*

Judgment set aside  
Defendant Discharged

*10/12/63*  
*[Signature]*

October TERM, A.D. 1963

THE DISTRICT OF COLUMBIA, ss:

Clark F. King  
Robert H. Campbell

CHESTER H. GRAY, Esq., Corporation Counsel, by

Assistant Corporation Counsel, who for the District of Columbia prosecutes in this behalf in his proper person, comes here into Court, and causes the Court to be informed, and complains that

Jack O. King

late of the District of Columbia aforesaid, on or about the 9th day of October in the year A. D. nineteen hundred and sixty three, in the District of Columbia aforesaid, and on            divers other days between that date and the date of the filing of this information at 1718 Eye Street, Northwest

\*

\*

\*

Did then and there conduct a business in second-hand

\*

\*

\*

personal property to wit: coins and stamps.

Without first having obtained a license so to do, Contrary to and in violation of An Act of Congress Police Regulations in such case made and provided, and constituting a law of the District of Columbia. D.C. 47-2339, P.L. 653.

CHESTER H. GRAY,  
Corporation Counsel

Personally appeared Seaward S. Lee this 14th day of October, A. D., 1963, and made oath before me that the facts set forth in the foregoing information are true, and those stated upon information received he believes to be true.

/s/ Clark F. King

DCW 785-'63

## WARRANT

~~THAT THE~~  
No. \_\_\_\_\_

DISTRICT OF COLUMBIA, ss:

To the Chief of Police of the  
District of Columbia, Greetings:

Whereas, it appears by oath of  
Seward S. Lee

that Jack O. King  
committed the offense as charged on the reverse  
side hereof,

YOU ARE THEREFORE HEREBY  
COMMANDED to take the said

Jack O. King

and bring him/her before the said COURT  
OF GENERAL SESSIONS forthwith to  
answer said charge.

Witness the Honorable JOHN LEWIS  
SMITH, JR., Chief Judge of the District of  
Columbia Court of General Sessions, and the  
seal of said Court this

OCT 24 1963 day of  
A.D. 19

WALTER F. BRAMHALL  
Clerk, Court of General Sessions

By \_\_\_\_\_  
Deputy Clerk

LET THIS WARRANT ISSUE

Judge, Court of General Sessions

OFFICER MUST EXECUTE CEPI

Amount Collateral Posted \$ 50.00

Date Collateral Posted 10-21-63

Cepi: Precinct Collateral Posted 3-4533

Remarks Oct 10-24-63

OFFICER'S NAME \_\_\_\_\_

Judge Scalley-3

298-4114

Col. 50.00

No. DC 30407-63

At No. 3 Precinct

Date 10-22-63

## INFORMATION

DISTRICT OF COLUMBIA

vs.

Jack O. King  
1718 Eye St. N.W.

Atty Joyce Cuppa Pettit

UNLICENSED Dealer in  
Record and Personal Property

ROOMING HOUSE

FALSE STATEMENT

ZONING REGULATIONS

APARTMENT HOUSE

PARK ON PRIVATE PROPERTY

VIOLATION ACT OF CONGRESS

## WITNESSES

Seward S. Lee

Officer

St. of L. & L.

Enforcement Branch

108-6000-X3765

See Inside

BOOK .....TAG .....

TICKET .....AUTO .....

.....Precinct

OCT 24 1963

Plea Not Guilty

Cmt 10/29/63 1:30

29  
 Req of Govt  
 Hefts motion to quash  
 and dismiss information  
 filed

OCT 29 1963

Hefts motions to  
 quash and dismiss  
 Granted

November 7, 1963

Notice of Appeal Filed. *Day*

November 12, 1963

Designation of Record, Statement of Errors and Statement of Proceedings and Evidence Filed. *W.E.*

November 18, 1963

Agreed Statement of Proceedings and Evidence Filed. *W.E.*

November 18, 1963

Four certified copies of Record delivered to Attorney for Appellant. *W.E.*

June 16, 1964

Printed Decision of the D. C. Court of Appeals reversing (Judge Hood) and dissenting (Judge Quinn) judgment of the lower Court. *W.E.*

NOV 29 1963  
 U.S. DISTRICT COURT  
 DISTRICT OF COLUMBIA  
 CLERK OF COURT

OCT 14 2 28 PM '63

FILED

DISTRICT OF COLUMBIA	)	
vs.	)	No. D.C. 30407 - '63
JACK O. KING,	)	
Defendant.	)	

MOTION TO QUASH AND DISMISS

Comes now the defendant, by and through his counsel, and moves this Honorable Court to dismiss the charge herein against the defendant, and as reasons therefor states as follows:

1. That on October 8, 1963, the defendant appeared before the Honorable Thomas C. Scalley, sitting in D. C. Branch of District of Columbia Court of General Sessions, to answer charge in Criminal Action No. \_\_\_\_\_ that he was operating a business in which he sold, bought and traded second-hand stamps and coins without first having obtained a second-hand dealers license in violation of Title 47, Sec. 2339 of the District of Columbia Code (1961), as amended.

2. That the government put on its case against defendant, and at the termination of the government's case, defendant's motion for a judgment of acquittal was granted; and that said motion was based on the ground that the defendant, under the facts presented in the government's case, did not fall within the purview of the statute.

3. That on October 21, 1963, the defendant, having knowledge that a warrant for his arrest had been issued, presented himself at the Third Precinct for service of the warrant, and posted collateral in the amount of \$50.00; that the charge contained in said warrant is the same charge for which the defendant was found not guilty on October 8, 1963, the only difference being that the dates alleged for the offense follow the date of October 8, 1963.

4. That the judgment of not guilty rendered on October 8, 1963, constitutes a plea in bar to the instant charge against the defendant

under two of the most entrenched doctrines in the law: stare decisis and res judicata.

5. And for such other reasons as may be presented at the time of hearing on this motion.

Joyce Capps  
Attorney for Defendant  
504 Federal Bar Building  
Washington 6, D.C.

---

ORDER OF OCTOBER 29, 1963

Judge Scalley

Defendant's motion to quash and dismiss granted.

---

NOTICE OF APPEAL

Notice is hereby given this 7th day of November, 1963, that the District of Columbia appeals to the District of Columbia Court of Appeals from the order of this court entered on the 29th day of October, 1963, granting the defendant's motion to quash and dismiss the information.

/s/ Chester H. Gray  
Corporation Counsel, D.C.

\*

\*

\*

AGREED STATEMENT OF  
PROCEEDINGS AND EVIDENCE

In information numbered D. C. 22692-'63, filed on August 6, 1963, it is charged that the defendant "\* \* \* on or about the 27th day of June \* \* \* nineteen hundred and sixty three, in the District of Columbia aforesaid, and on divers other days between that date and the date of the filing of this information \* \* \* [d]id then and there conduct a business dealing in second-hand personal property to wit; coins and stamps [w]ithout first having obtained a license so to do \* \* \*." The case came on for trial on October 8, 1963. After witnesses were sworn and some testimony received, the defendant was found not guilty on the ground that his activities did not fall within the purview of the statute and regulation.

Thereafter, in information numbered D. C. 30407-'63, filed on October 14, 1963, it is charged that the defendant "\* \* \* on or about the 9th day of October \* \* \* nineteen hundred and sixty three, in the District of Columbia aforesaid, and on divers other days between that date and the date of the filing of this information \* \* \* [d]id then and there conduct a business in second-hand personal property to wit: coins and stamps [w]ithout first having obtained a license so to do \*\*\*." The defendant filed a motion to quash and dismiss this second information, which motion was granted by the court on October 29, 1963. A notice of appeal from the dismissal of the second information was filed on November 7, 1963.

---

# District of Columbia Court of Appeals

No. 3414

January Term, 19 64

District of Columbia,

Appellant,

v.

DISTRICT OF COLUMBIA  
COURT OF APPEALS

Jack O. King,

Appellee.

FILED JUN 16 1964

*C. Newell Atkinson*  
CLERK

Appeal from *the District of Columbia Court of General Sessions,*

## JUDGMENT

*This cause came on to be heard on the transcript of the record from the District of Columbia Court of General Sessions, and was argued by counsel.*

*On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of said Court, in this cause, be and the same is hereby, reversed, and that this cause be and it is hereby remanded to the said District of Columbia Court of General Sessions.*

June 16, 1964

Dissenting opinion by:

*Andrew M. Hood*  
Andrew M. Hood,  
Chief Judge.

*Thomas D. Quinn*  
Thomas D. Quinn,  
Associate Judge.

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 3414

DISTRICT OF COLUMBIA, APPELLANT,

v.

JACK O. KING, APPELLEE.

Appeal from the District of Columbia  
Court of General Sessions

(Argued February 17, 1964      Decided June 16, 1964)

*John R. Hess*, Assistant Corporation Counsel, with whom *Chester H. Gray*, Corporation Counsel, *Milton D. Korman*, Principal Assistant Corporation Counsel, and *Hubert B. Pair*, Assistant Corporation Counsel, were on the brief, for appellant.

*Joyce Capps* for appellee.

Before HOOD, Chief Judge, and QUINN and MYERS, Associate Judges.

HOOD, *Chief Judge*: In August of 1963 an information was filed against appellee, charging that on June 27, 1963, "and on divers other days between that date and the date of the filing" of the information, he did "conduct a business dealing in second-hand personal property to wit; coins and stamps," without first having obtained a license to do so.<sup>1</sup> The case came on for trial on October 8, 1963, and after witnesses were sworn and testimony received the trial court found appellee "not guilty on the ground that his activities did not fall within the purview of the statute and regulation." On October 14, 1963, a second information was filed against appellee. This information

<sup>1</sup> Code 1961, 47-2339, provides for the licensing of "any person engaging in the business of buying, selling, trading, exchanging, or dealing in second-hand personal property of any description \* \* \*."

## 2

was practically identical in wording with the first information except that it alleged the offense to have occurred on October 9, 1963, and on other days between that date and the date of the filing of the second information.

Appellee filed a motion to quash and dismiss the second information on the ground that the judgment of not guilty on the first information "constituted a plea in bar" to the second information under the doctrines of stare decisis and res judicata. This motion was granted and the government has appealed.

In *District of Columbia v. Horning*, 47 App.D.C. 413, 420 (1918), it was said:

"It is well settled that an acquittal or a conviction in a criminal prosecution is not a bar to a later indictment for the same crime, where it appears that the acts were committed at a different date from those involved in the former prosecution."<sup>2</sup>

Appellee seeks to avoid the impact of this rule by asserting that the second charge is the same as the first in law and in fact; but the record does not sustain this assertion. Undoubtedly both informations charged violations of the same statute; but the record does not disclose what activities of appellee were held in the first case not to be within the purview of the statute, and of course cannot show what activities of appellee will be disclosed by the evidence under the second prosecution. It was error to dismiss the second information.

In this posture of the case we do not reach the government's contention that cancelled postage stamps and old coins constitute secondhand personal property within the meaning of the statute.

*Reversed.*

QUINN, Associate Judge, dissenting: The rule announced by today's decision subjects a criminal defendant to unlimited harassment by the government despite a prior finding that he was not guilty as a matter of law of engaging in the activities sought to be punished.

<sup>2</sup> See also, *Thomas v. District of Columbia*, D. C. Mun. App., 161 A.2d 52 (1960); *Savage v. District of Columbia*, D. C. Mun. App., 54 A.2d 562 (1947).

## 3

Here appellee's business in coins and stamps was found not to fall within the purview of the statute and regulations requiring the licensing of any person conducting a business in secondhand personal property. Six days later the government filed a second information charging the identical offense but alleging no reasons or facts why the prior determination was erroneous or distinguishable. In effect the government alleged only that the offense was continuing. Were the alleged offense not of a continuing nature the government would have been barred from filing such an information by the Fifth Amendment. Giving the government a second day in court under the circumstances here presented is equally offensive.

The majority states:

"\* \* \* the record does not disclose what activities of appellee were held in the first case not to be within the purview of the statute, and of course cannot show what activities of appellee will be disclosed by the evidence under the second prosecution. \* \* \*"

The effect of this holding is to place upon appellee the burden and expense of defending a second criminal prosecution to show that his activities are the same as those considered in the first litigation. And this despite the fact that he was there found not guilty as a matter of law. I would rather place the burden upon the government and hold that unless the government can make a preliminary showing of how the activities of the defendant have changed or are distinguishable from the ones considered in the first proceeding, the second proceeding is barred. The majority decision subjects a presumably innocent defendant to unlimited harassment, expense and prosecution until the government wins its case. Such a result is patently unfair. Consequently, I dissent.

UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

JACK O. KING, )  
Petitioner (Appellee), )  
vs. ) No. 18,705  
DISTRICT OF COLUMBIA, )  
Respondent (Appellant). )

PETITION FOR ALLOWANCE OF AN APPEAL

Petition is hereby made by Jack O. King for allowance of an appeal from the judgment of the District of Columbia Court of Appeals entered in its Case No. 3414, titled "District of Columbia, Appellant, v. Jack O. King, Appellee," original opinion being dated June 16, 1964.

Joyce Capps  
Attorney for Petitioner

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**BRIEF FOR APPELLEE**

---

**UNITED STATES COURT OF APPEALS  
For The District Of Columbia Circuit**

---

No. 18, 705

---

**JACK O. KING,**

**Appellant,**

**v.**

**DISTRICT OF COLUMBIA,**

**Appellee.**

---

**Appeal From The District Of Columbia  
Court Of Appeals**

---

United States Court of Appeals  
for the District of Columbia Circuit

**FILED OCT 12 1964**

*Morton J. Paulson*

**CHESTER H. GRAY,  
Corporation Counsel, D. C.**

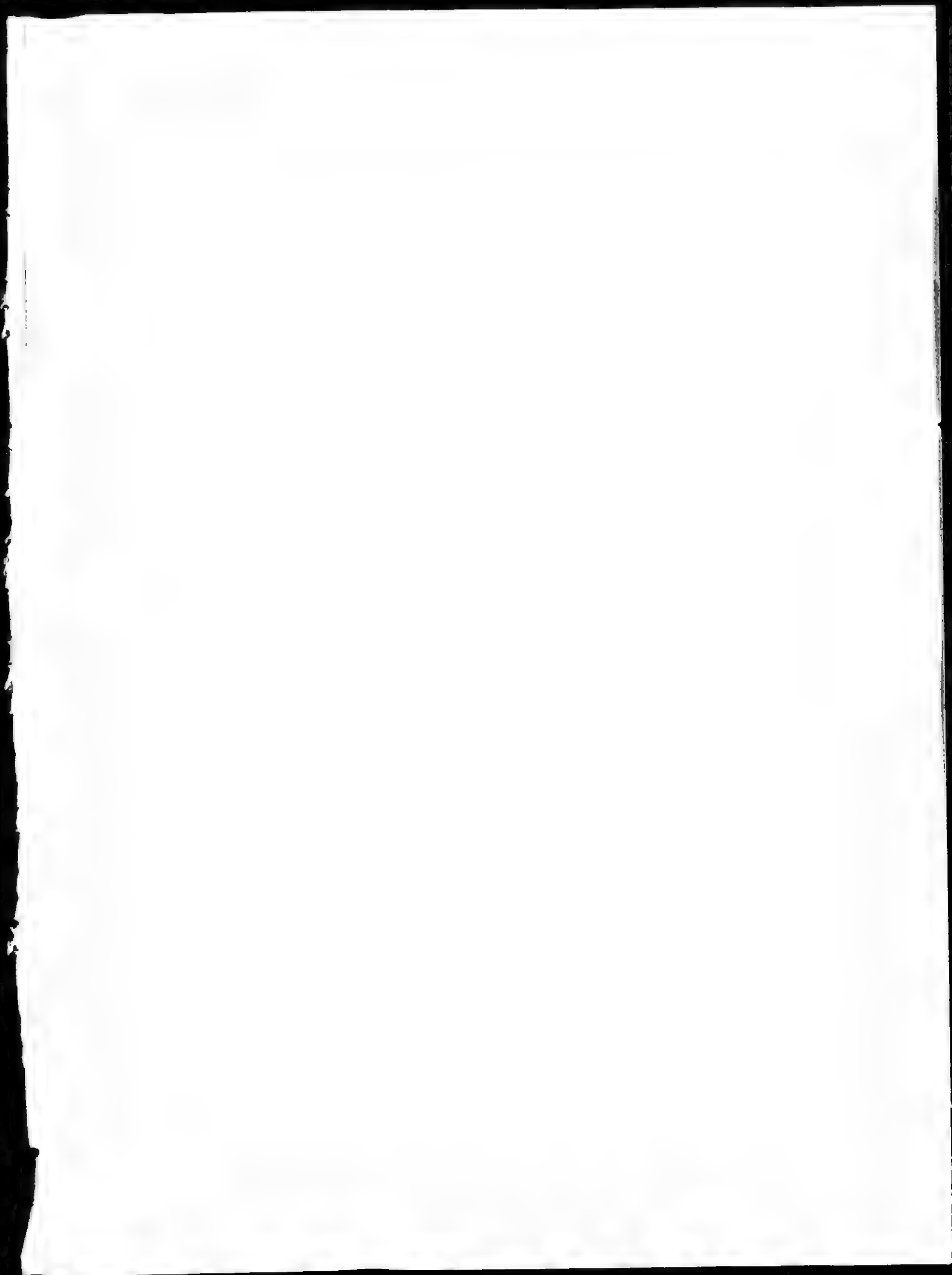
**MILTON D. KORMAN,  
Principal Assistant  
Corporation Counsel, D. C.**

**HUBERT B. PAIR,  
Assistant Corporation  
Counsel, D. C.**

**JOHN R. HESS,  
Assistant Corporation  
Counsel, D. C.**

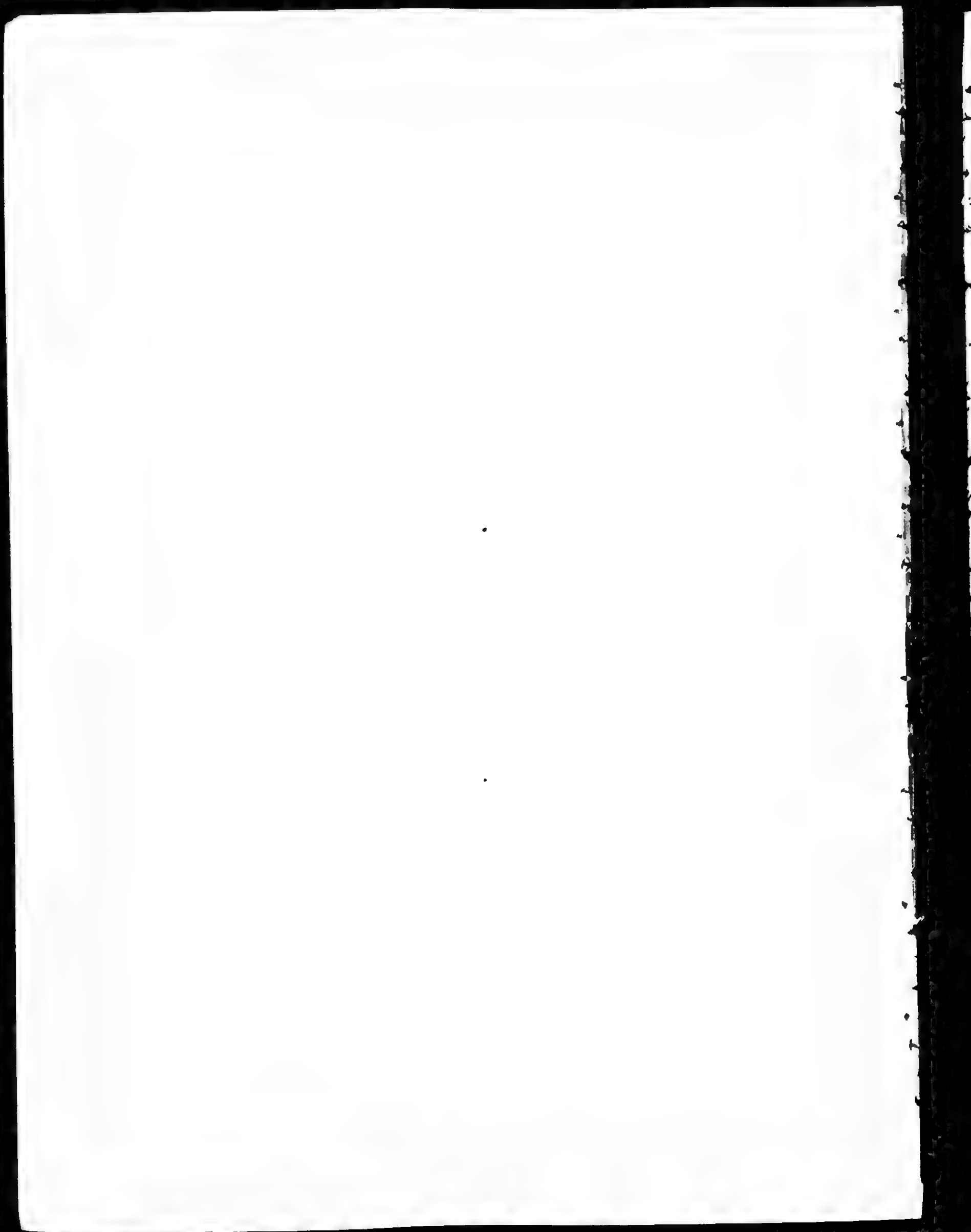
**Attorneys for Appellee,  
District Building,  
Washington, D. C. 20004**

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### QUESTION PRESENTED

Whether a finding of not guilty of an offense continuous in nature, on the ground that the accused's "activities did not fall within the purview of the statute and regulation," constitutes a bar to a second prosecution for the commission of the same offense committed during a period subsequent to that charged in the first information.



I N D E X

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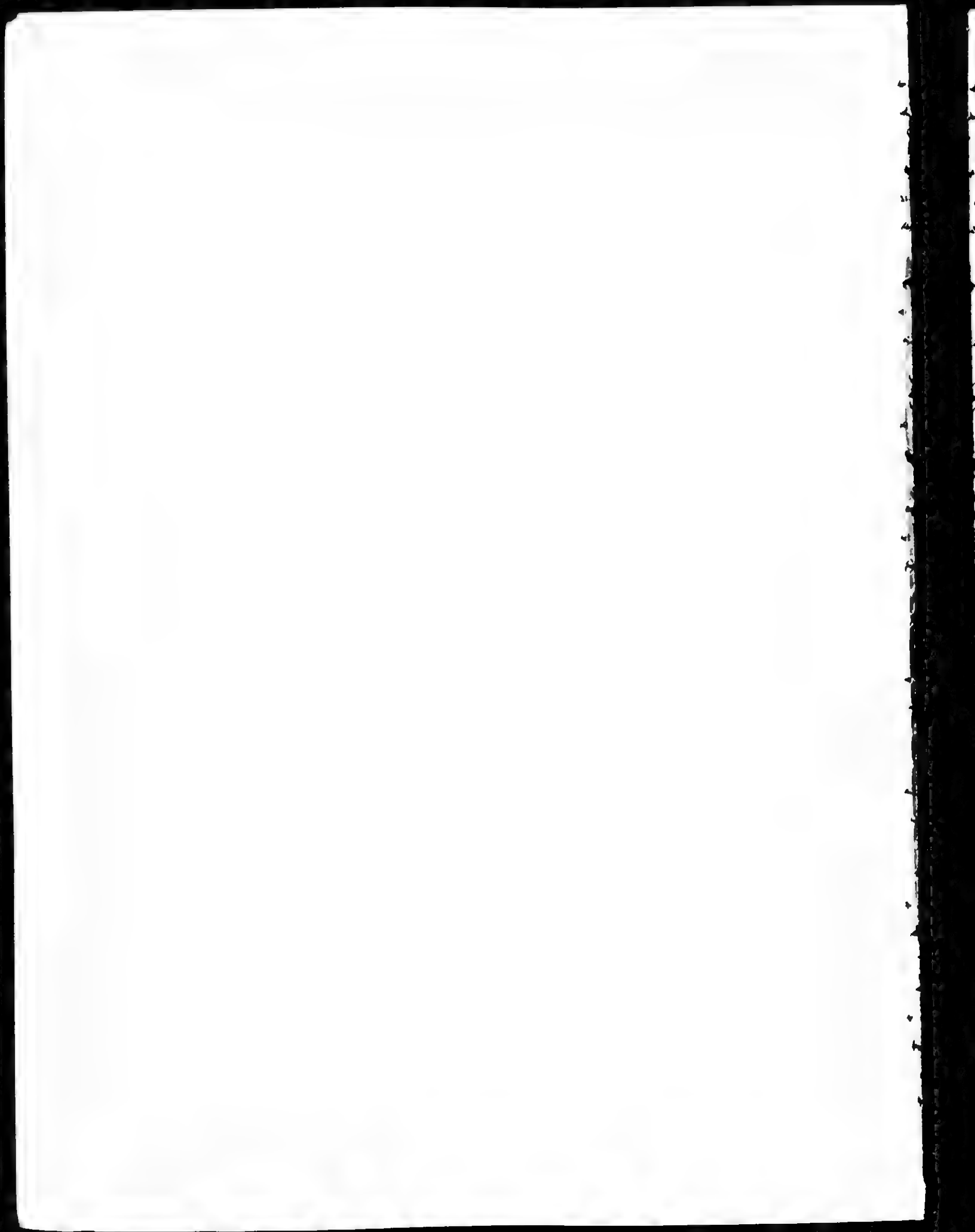
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<u>An acquittal of a charge of conducting a</u> <u>business without a license is not a</u> <u>bar to a prosecution for the same</u> <u>offense committed during a subsequent</u> <u>period.....</u>	3
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\* Cases relied upon are marked by asterisks.



UNITED STATES COURT OF APPEALS  
For The District Of Columbia Circuit

---

No. 18, 705

---

JACK O. KING,

Appellant,

v.

DISTRICT OF COLUMBIA,

Appellee

---

Appeal From The District Of Columbia  
Court Of Appeals

---

BRIEF FOR APPELLEE

---

COUNTER-STATEMENT OF THE CASE

With the exception of the last sentence of the first paragraph, appellee accepts appellant's Statement of the Case.

Nowhere in the record does it appear that there was testimony at the first trial that " \* \* \* appellant did in fact engage in the business of buying and selling coins and stamps \* \* \*" or that this was " \* \* \* conceded and stipulated to by appellant at the time of trial \* \* \*." Neither is there support in the record for the statement

that the court entered a judgment of acquittal on the first information  
" \* \* \* on the ground that stamps and coins do not constitute second-  
hand personal property within the meaning of the Secondhand Dealers  
Statute \* \* \* . "

Accordingly, the last sentence of the first paragraph of the  
Statement of the Case should read: "After witnesses were sworn and  
some testimony received, [at the first trial,] the [appellant] was  
found not guilty on the ground that his activities did not fall within  
the purview of the statute and regulation" (J. A. 9).

#### SUMMARY OF THE ARGUMENT

Since, after trial on the first information, appellant was  
found "not guilty on the ground that his activities did not fall within  
the purview of the statute and regulation" involved, absent any  
showing in the record as to the nature of such activities, the court  
below properly held that the dismissal of the second information  
prior to the receipt of any testimony was erroneous.

In any event, the offense being continuous in nature, a prior  
judgment of not guilty is not a bar to a second prosecution for the  
commission of the same offense committed during a subsequent  
period.

### ARGUMENT

An acquittal of a charge of conducting a business without a license is not a bar to a prosecution for the same offense committed during a subsequent period.

Appellant contends that the doctrine of res judicata barred the second prosecution, because, he states, the doctrine " \* \* \* operates to render a prior judgment conclusive between the parties as to those matters actually litigated and determined by the prior judgment" (Appellant's Brief, p. 5). There are two short answers to this contention. Firstly, no matters of substance were determined by the prior judgment of not guilty. Secondly, the second information charged an offense committed at an entirely different time from that charged in the first information.

At the end of the first prosecution, appellant " \* \* \* was found not guilty on the ground that his activities did not fall within the purview of the statute and regulation" (J. A. 9). Nowhere does it appear that the trial court ruled that a dealer in stamps and coins need not, under the law, obtain a secondhand dealers license. As the appellant, himself, stated in his motion to quash and dismiss the second information, all that was determined by the first prosecution was that " \* \* \* under the facts presented in the government's case,

[appellant] did not fall within the purview of the statute" (J. A. 7). There is nothing in the record upon which a determination can be based as to what factual issues were presented and resolved at the trial in the government's first case. Perhaps the government's proof was, in the trial court's view, lacking in some of the essential elements of the offense. If that be so, it does not necessarily follow that the same deficiencies would have existed had the government been permitted to go forward with the second prosecution. The District of Columbia Court of Appeals very aptly summed it up by stating:

"\* \* \* Undoubtedly both informations charged violations of the same statute; but the record does not disclose what activities of appellee were held in the first case not to be within the purview of the statute, and of course cannot show what activities of appellee will be disclosed by the evidence under the second prosecution. It was error to dismiss the second information" (J. A. 12).

Because of the distinction, as shown by the record, between what the trial judge said following his finding of not guilty at the end of the first trial and what the appellant now states he said, which is not supported by the record, the whole basic premise for the applicability of the doctrine of res judicata is destroyed.

Even if one were to assume a situation where, following a complete trial, a ruling is made that certain coins and stamps are not secondhand personal property for the purposes of the statute, such a ruling would not bar a second prosecution for an offense involving the sale of coins and stamps committed during a subsequent period.

This Court, in the case of District of Columbia v. Horning, 47 App. D. C. 413, 420, said:

" \* \* \* It is well settled that an acquittal or a conviction in a criminal prosecution is not a bar to a later indictment for the same crime, where it appears that the acts were committed at a different date from those involved in the former prosecution. \* \* \* "

It can readily be seen that if the law were otherwise, an erroneous decision by a trial court on the applicability of the law to a particular set of facts would forever give the defendant in the case a license to thereafter continually violate the law. Jeopardy having attached at the first prosecution, as was the case here, the government would be precluded from obtaining an appellate ruling as to the correctness of the trial court's decision. Should the same or another judge later, in a case involving a different defendant, make a contrary determination as to the applicability of the law, disparity in the enforcement of the criminal laws would result.

That the doctrine of res judicata is not applicable where the offense is a continuing one is best illustrated by an example. If, for instance, a taxicab driver, charged with exceeding the 15 mile per hour limit through a school zone, is found not guilty upon a statement by the trial judge that the regulation applies only to private vehicles and not to taxicabs, the taxicab driver could, if the law were as appellant contends, with impunity forever speed through school zones.

The cases cited by the appellant are not in point. They all pertain to a situation where two crimes arise out of the same set of facts -- not identical sets of facts occurring on different days. In those cases the courts have held merely that an adjudication of facts on the trial of one criminal offense is binding in a trial of a second offense arising out of the same set of facts. For example, in Sealfon v. United States, 332 U. S. 575, it was decided that the adjudication of facts at a trial on a charge of conspiracy to defraud is binding at the trial on the substantive charge of fraud. Such cases are readily distinguishable from the case now before this Court.

However, the case of Ellingham v. State, 163 Md. 278, 162 A. 709, cited by appellant, supports appellee's contention that the doctrine of res judicata is not a bar to a subsequent prosecution for an offense continuous in nature. Involved there were successive

prosecutions of a telegraph operator acting as an agent of a foreign corporation which had not complied with certain licensing requirements. Following his acquittal of the first charge, a second prosecution was instituted charging him with the same offense but for a period preceding that charged in the first prosecution. In reversing the second conviction, the court stated:

" ' \* \* \* The prosecution of an offense of this nature is a bar to a subsequent prosecution for the same offense charged to have been committed at any time before the institution of the first prosecution, but it is not a bar to a subsequent prosecution for continuing the offense thereafter, as this is a new violation of the law. '

\* \* \* \* \*

"The acquittal of the appellant when tried upon the charge which referred to November 18th was a determination that his conceded work as a telegraph operator on that day did not make him liable to prosecution as an agent of the foreign corporation by which he was employed. In view of that adjudication, and of the rule we have stated, he should not be compelled to undergo another trial on the charge of having performed, on the preceding day, the same unchanging and continuous service." [Emphasis supplied.]

Applying the law as set forth in District of Columbia v. Horning, supra, and Ellingham v. State, supra, it is clear that the appellant's prior acquittal of the charge of conducting, without a license, a secondhand business during the period between June 27, 1963 and August 6, 1963, did not constitute a bar to a prosecution for conducting, without a license, a secondhand business during the period between October 9, 1963 and October 14, 1963.

#### CONCLUSION

In view of the foregoing, it is respectfully submitted that the judgment of the court below was in all respects correct and should, therefore, be affirmed.

CHESTER H. GRAY,  
Corporation Counsel, D. C.

MILTON D. KORMAN,  
Principal Assistant  
Corporation Counsel, D. C.

HUBERT B. PAIR,  
Assistant Corporation  
Counsel, D. C.

JOHN R. HESS,  
Assistant Corporation  
Counsel, D. C.

Attorneys for Appellee,  
District Building,  
Washington, D. C. 20004

